

U.S. Patent Application Serial No. 10/581,533  
Reply to Final Office Action of July 30, 2009

REMARKS

Request for Reconsideration

Applicants submit this Response to the Final Office Action in connection with their Request for Continued Examination. Applicants set forth herein the circumstances regarding the timing of the instant submission, and request herein for continued prosecution.

After receiving the Final Office Action, Applicants met with Examiner Rowan on October 7, 2009, where Applicants flew in from New Zealand to meet with the Examiner in an effort to describe and illustrate their invention and overcome the final rejection. At that Interview, and according to Examiner Rowan, Applicants "discussed the invention and demonstrated a working model of the trap noting the compression of the ring on the examiner's finger. The examiner stated that patentable subject matter exists in the case, but more structure [is] needed to be added to the claims. An amendment will be filed and if not judged sufficient, the examiner will provide a counterproposal." (Interview Summary). Applicants' undersigned representative, present at the Interview, confirms the very positive indications given to Applicants regarding the patentability of the invention and the Office's willingness to work with Applicants to achieve issuance of their patent.

At the Interview and afterward, Examiner Rowan agreed to review modified claims, via email, and Applicants' representative endeavored to speak and/or otherwise converse with Examiner Rowan to coordinate an agreed-upon submission. Indeed, Applicants' representative endeavored to do this throughout the fall of 2009 and spring of 2010 in an effort to finalize the case, as per the agreement with Examiner Rowan. After some brief conversations, many messages and emails to him, on December 15, 2009, Examiner Rowan facsimiled Applicants' representative a "picture" claim, which was quite lengthy and included therein numerous additional claim elements, which Applicants' representative viewed as unnecessary. Applicants' representative immediately tried to contact Examiner Rowan and continued efforts to speak with him in an effort to finalize the case, which Examiner Rowan expressly told Applicants had "patentable subject matter" and that a patent would issue, subject to minor modifications to the claims. Applicants, having flown back to New Zealand, were and remain

U.S. Patent Application Serial No. 10/581,533  
Reply to Final Office Action of July 30, 2009

confused at why this case has not resolved, despite the very positive assurances given by the Office and Applicants' representative's continued efforts.

Despite the sporadic contact with the Examiner, Applicants' representative continued his efforts to contact Examiner Rowan and communicated via voice messages and emails with the examiner, who did not contact Applicants' representative, despite emphatic earlier personal assurances by the Examiner to work this out between us. Based on these assurances and various other statements, Applicants filed a Request for Continued Examination on January 29, 2010 to preserve the case, notifying Examiner Rowan by phone and email of the filing and asking him to contact Applicants' representative to finalize the discussions regarding claim modifications. Applicants felt that by their actions and discussions, and the assurances given by the Office, they had responded to Action and that their proposals and such constituted submissions. Applicants also indicated to Examiner Rowan that they would file a preliminary amendment to reflect the claim modifications to be finalized with the Examiner, which at that time Applicants' representative believed was imminent.

In early February, Applicant made more diligent efforts to contact the examiner to no avail. Again, Applicants, based on Examiner Rowan's strong assurances, felt that the case was imminently allowable.

Sometime after this, in late February or March, Applicants' representative learned that Examiner Rowan had retired from the Patent Office. A call to Examiner Rowan's supervisor confirmed this. Applicants' representative told the supervisor of what had transpired over the past months. Applicant was instructed to contact the new examiner, when assigned, to resume the dialogue. With Examiner Rowan's departure, the agreed-upon arrangement apparently became null and void, and the Request was later found insufficient.

Applicants have acted diligently upon receipt of the above information to bring this matter to the attention of the Office and seek resolution in an expeditious manner. Applicants and their representative herein seek to remedy the insufficiency and otherwise move the case forward.

On April 12, 2010, Applicants' representative spoke with the new Examiner in the case, Darren Ark, and told him about the above situation. During that discussion, Applicants'

U.S. Patent Application Serial No. 10/581,533  
Reply to Final Office Action of July 30, 2009

representative told the Examiner that Applicants were filing the instant Response, consolidating the various earlier discussions with Examiner Rowan, in an effort to move the case further.

Applicants, now faced with starting the entire negotiation from square one with a new examiner, herein formally respond the Final Office Action, and request the acceptance of the response herein, and acceptance of the aforementioned Request. Should a petition for this Request or other petition, such as for revival of an unavoidably or unintentionally abandoned patent application, be required, please contact Applicants' representative as soon as possible. Applicants nonetheless respectfully request that the instant documents be accepted, particularly in view of the belabored prosecution Applicants have contended with for the last six months.

#### The Final Office Action

Applicants now turn to the instant response to the Office Action mailed January 29, 2009 in which claims 1, 2, 4-5, 7, 9-10, 12-14, 16-19, 23, and 25-27 were finally rejected.

First, Applicants first thank the Examiner for withdrawing the 35 U.S.C. § 112, second paragraph, rejection of claims 16-17 and 25-27 as being indefinite. The Office, however, maintains the other rejections from the earlier Action.

Claims 1 and 19 are amended herein. All amendments are fully supported by the original application and drawings. No new matter is added. Claims 1, 2, 4-5, 7, 9-10, 12-14, 16-19, 23, and 25-29 are pending in this application. Claims 28-29 are withdrawn from consideration. In view of the foregoing amendments, prosecution thusfar, and the following remarks, Applicants respectfully request advancement of this application to allowance.

Independent claims 1 and 19 have been amended to reflect comments made by Examiner Rowan during the interview with the New Zealand inventors and in subsequent conversations with Applicants representative. In particular, Applicants have added additional structure, as requested by Examiner Rowan and in line with his comments. Particularly, Applicants have amended claims 1 and 19 to reflect that the extermination device has an entrance or opening to receive the pest, for example, which is attracted by some lure, bait or other attractant, disposed further within the device. A trigger mechanism is poised to actuate upon disturbance, releasing a tensed resilient ring disposed within and around an entrance portion containing the pest. The trigger mechanism releases the resilient ring, which snaps onto

U.S. Patent Application Serial No. 10/581,533  
Reply to Final Office Action of July 30, 2009

the pest, for example, the neck or other body portion. Additionally, the resilient ring has disengaged from the extermination device entirely, allowing the pest to flee, albeit with a killing means attached to it. The pest, unlike in the prior art, then dies away from the extermination device, avoiding the need to clear the device of dead or maimed animals. In a preferred embodiment, the device rearms with another resilient ring immediately after actuation.

Again, Applicants discussed amendments, such as the above, with Examiner Rowan over the course of prosecution until his unexpected retirement.

Applicants appreciate the time accorded to Applicants' representative by the new Examiner, and respectfully submit that the instant amendments both overcome the rejections of record and make the case allowable.

#### General Comments

As a new examiner has been assigned to the case, Applicants shall reiterate the salient features of the instant invention. A goal of the present invention is to provide a humane alternative to known traps and snares, which cause considerable pain and lengthy suffering to the cnsnared animal. There is also a need to reduce the time taken by a trapper to constantly monitor and reset a trap, as well as providing the public with an extermination apparatus that avoids having to remove injured, diseased and aggressive animals from the apparatus.

As disclosed in the specification, the invention provides an extermination apparatus. This apparatus is baited and a trigger mechanism is set within the device. When an animal enters the trap to reach the bait, the animal springs the trigger mechanism which releases a ring around the animal's neck or other body part. The ring continues to constrict around the animal resulting in the death of the animal.

The apparatus of the present invention is configured so that the constricting device or ring is completely free of the extermination device when the constricting device is released by the trigger mechanism and snapped around an animal. For example, claim 1 recites: "... *wherein the extermination device is configured to release the resilient ring free of the extermination device.*"

U.S. Patent Application Serial No. 10/581,533  
Reply to Final Office Action of July 30, 2009

Therefore, once the animal's neck or other body part is constricted by the released ring, the animal is free to leave the extermination apparatus, before dying unattached to the apparatus. Because the ring, when contracted, has a circumference that is less than the size of the animal, e.g., the animal's neck, the resilient ring will continue to cut off the blood and air supply to the animal even when the animal has left the vicinity of the extermination device. Further, the employment of the humane yet lethal ring replaces the inhumane and inefficient wire and jaw devices of the past, allowing for clean, cost-effective and humane extermination of pest animals.

Rejections Under 35 U.S.C. § 102

Claims 1-2, 4, 7, 10, 18, and 19 are again and finally rejected under 35 U.S.C. § 102(b) as being anticipated by Popp (U.S. 2,247,066). Applicants respectfully traverse the rejection because Popp fails to disclose each element of independent claims 1 and 19, particularly as presently amended.

Claim 1 is directed to an extermination device. The extermination device comprises a holder and a trigger mechanism, the holder being configured to hold an expanded resilient ring, wherein the extermination device is configured to release the resilient ring free of the extermination device such that it contracts around a pest when the trigger mechanism is actuated by the pest, thereby exterminating the pest.

1. *The Resilient Ring is Released Free of the Extermination Device*

As Applicants have repeatedly noted, Popp fails to disclose an extermination device that is "configured to release the resilient ring free of the extermination device," as recited in claim 1, and "releasing the resilient ring free of the holder," as recited in claim 19.

Popp describes a trap including a noose 11, such as shown in FIG. 1. The noose is preferably made of wire. (Col. 2, line 20.) The noose is formed of a flexible material and extends around inside of a helical tension spring 12. (Col. 1, lines 48-53.) One end 13 of the wire forms an eye and another portion of the wire can slide through the eye, such as can be seen in FIG. 1. (Col. 2, lines 30-33.) The end 14 of the wire is adapted to be secured to some suitable fixed object, such as a stake 15 driven into the ground. Col. 2, lines 33-38.

U.S. Patent Application Serial No. 10/581,533  
Reply to Final Office Action of July 30, 2009

Accordingly, Popp fails to disclose this element. Indeed, merely by reviewing the drawings of Popp one can readily see that it is a conventional snare device, and in no way similar to the devices of the instant invention.

*II. The Extermination Device is Configured to Exterminate A Pest*

Popp fails to disclose an extermination device that is, "configured to release the resilient ring free of the extermination device such that it contracts around a pest when the trigger mechanism is actuated by the pest, thereby exterminating the pest," as recited in claim 1. Independent claim 19 similarly recites a method of exterminating a pest.

Rather, Popp describes a trap "preferably for catching the smaller varieties of fur bearing animals alive for breeding purposes." (Page 1, col. 1, lines 1-4.) Popp further explains that the size of the noose can be selected to "securely hold the animal without injuring it" and "use with the trap a spring which will contract the noose to that size and prevent it from being contracted further by the effort of the effort of the animal to escape." (Page 2, col. 2, lines 55-63, emphasis added). Similarly, Popp describes the use of smaller springs to "hold the animal more securely and lessen the possibility of escape." (Page 2, col. 2, lines 66-70.)

Although Popp includes the statement that "the trap may be constructed in any size and be used for catching any size of animals and may be adjusted so as to not catch the animal alive," there is no disclosure or suggestion in Popp as to how such an adjustment would be made. Rather, Popp goes on to describe a trap that is designed not to cause injury to an animal.

Accordingly, Popp fails to disclose all elements of independent claims 1 and 19. Again, the entire focus of Popp is to capture the animal in question alive, whereas the instant invention is entirely devoted to the extermination of the pest animals.

*III. Summary and Dependent Claims*

As discussed above, Popp fails to disclose all elements of claims 1 and 19. Further, Applicants respectfully submit that it would not have been obvious to modify Popp to include these deficiencies because there are no teachings or suggestions to do so in the reference, which is again directed to snares for live animals. Accordingly, Applicants respectfully request

U.S. Patent Application Serial No. 10/581,533  
Reply to Final Office Action of July 30, 2009

reconsideration and allowance of claims 1 and 19, as well as dependent claims 2, 4, 7, 10, and 18 that ultimately depend from claim 1.

In view of the above arguments and amendments to independent Claims 1 and 19, Applicants respectfully submit that the claims, as amended, overcome all § 102(b) rejections. Reconsideration and withdrawal of the § 102(b) rejections are, accordingly, respectfully requested.

Rejections Under 35 U.S.C. § 103

1. *Claims 9, 12-14, 16-17, and 25-27*

Claims 9, 12-14, 16-17, and 25-27 are again and finally rejected under 35 U.S.C. § 103(a) as being obvious over Popp (U.S. 2,247,066). Applicants again respectfully traverse the rejection.

A. Claim 9

Claim 9 recites an "extermination device as claimed in claim 1, wherein the resilient ring is made from natural or synthetic rubber."

The Office Action finds that Popp discloses a ring made from piano wire and that it would have been obvious to employ a natural or synthetic rubber since the selection of a known material is based on its suitability for the intended use. Applicants respectfully disagree. Not only does Popp fail to disclose the use of rubber, Popp teaches away from such a modification.

Initially, on page 3 (in reference to claim 10) the Office Action notes that "the resilient ring is made from piano wire and a spring." In this rejection, the Office Action states that it would have been obvious to modify Popp to replace the piano snare wire with rubber.

Popp describes in page 1, col. 2, lines 1-35 the reasons that he selected piano wire, and also reasons why other materials have been found to be unsuitable for the noose. For example, Popp explains that the material should not contract. "[O]rdinary types of chain are unsuitable for the noose, as . . . the chain itself contracts in length . . . instead of sliding around inside of the spring 12 as the spring contracts." (Page 1, col. 2, lines 3-10.) Thus, Popp teaches away from the use of a material that contracts in length and would not slide around inside of the spring, such as rubber.

U.S. Patent Application Serial No. 10/581,533  
Reply to Final Office Action of July 30, 2009

Similarly, Popp teaches that the material should not be too flexible. "The noose is preferably made of wire composed either of a single strong and resilient strand, such as piano wire or the like, or else of a wire composed of a small number of strands so that it will not be too flexible." (Page 1, col. 2, lines 20-24.) The material should be sufficiently stiff to allow excess wire to be forced out of the noose through eye 13 on the end of the wire. (Page 1, col. 2, lines 30-33.) Thus, Popp again teaches away from the use of a flexible material that lacks stiffness, such as rubber.

In view of the foregoing, Popp teaches away from a modification of a piano wire with rubber, and it would not have been obvious in view of Popp to make such a modification. In addition, claim 9 depends from claim 1, which is allowable for the reasons noted above. Accordingly, Applicants respectfully request reconsideration and allowance of claim 9. Applicants do not otherwise concede the correctness of the rejection.

B. Claims 14 and 16-17

Claim 14 is directed to the extermination device as claimed in claim 1, wherein the holder is configured to hold a plurality of expanded resilient rings and to hold a first one of the expanded resilient rings at a release position, and the extermination device is configured to release the first one of the expanded resilient rings when the trigger mechanism is actuated and to move a second one of the expanded resilient rings to the release position when the first one of the expanded resilient rings is released from the release position.

The Office Action states that Popp shows one resilient ring, but then asserts that it would have been obvious to modify Popp to include more than one ring for multiplied effect. Applicant respectfully disagrees.

There is no disclosure in Popp of a device having more than one ring, and the device in Popp is only suitable to hold a single ring. It would not have been obvious to modify Popp to hold multiple rings because such a modification would require significant design changes that are neither taught nor suggested by Popp.

Moreover, claim 14 recites "the extermination device is configured to release the first one of the expanded rings . . . and to move a second one of the expanded resilient rings to the release position when the first one . . . is released."

U.S. Patent Application Serial No. 10/581,533  
Reply to Final Office Action of July 30, 2009

Popp does not disclose an extermination device configured to move a second ring to a release position when the first one is released, and it would not have been obvious in view of Popp to make such a modification.

Claim 14 depends from claim 1, and is also allowable for at least the same reasons. Accordingly, Applicants respectfully request reconsideration and allowance of claim 14, as well as claims 16 and 17 that ultimately depend therefrom.

**Claims 12-13 and 25-27**

As discussed above, Popp fails to disclose or even suggest an extermination device that is configured to release the resilient ring free of the extermination device, as recited in claim 1. Claim 19 similarly recites "releasing the resilient ring free of the holder." In contrast, Popp discloses a noose that must be secured to a fixed object, such as a stake 15 driven into the ground. Col. 2, lines 33-38.

Furthermore, Popp teaches away from such a modification because the trap of Popp is intended to capture animals alive for breeding purposes, or alternatively for their fur. If the noose is not secured to a fixed object, the device would be inoperable for the intended purpose of capturing the animals, as the animal would be free to run away from the trap.

Claims 12-13 and 25-27 each depend from one of claims 1 or 19. Accordingly, Applicants respectfully request reconsideration and allowance of claims 12-13 and 25-27. Applicants do not otherwise concede the correctness of the rejection.

***II. Claims 5 and 23***

Claims 5 and 23 are again and finally rejected under 35 U.S.C. § 103(a) as being obvious over Popp in view of Spillet (U.S. 4,735,011). Applicants respectfully traverse the rejection.

Claim depends from claim 1 and claim 23 depends from claim 19. Accordingly, claims 5 and 23 are allowable for at least the same reasons discussed above with respect to Popp. Further, Spillet fails to overcome the deficiencies of Popp.

Accordingly, Applicants respectfully request reconsideration and allowance of claims 5 and 23.

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Reply to Final Office Action of July 30, 2009

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Applicants respectfully submit that the claims, as amended, overcome all § 103(a) rejections. Reconsideration and withdrawal of the § 103(a) rejections are, accordingly, respectfully requested.

Furthermore, in view of the above amendments, arguments and recitation of the procedural aspects of the instant invention, Applicants respectfully submit that all of the claims are allowable over the art of record, and that the instant response be considered timely and entered. Reconsideration and withdrawal of all of the §§ 102(b) and 103(a) rejections are, accordingly, respectfully requested.

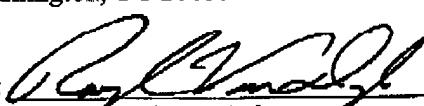
#### CONCLUSION

In view of the foregoing, Applicants respectfully request a Notice of Allowance. There may be additional reasons that the pending subject matter is patentably distinct from the cited references in addition to those discussed herein. Applicants reserve the right to raise any such arguments in the future. If the Examiner believes that a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

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Dated: April 14, 2010

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